

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 60-021-19-1-5-01013-19
Petitioner: Clifford & Shirley Davis
Respondent: Owen County Assessor
Parcel: 60-06-10-100-050.000-021
Assessment Year: 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Clifford and Shirley Davis contested the 2019 assessed value of their property located at 3886 Maze Road in Spencer, Indiana.
2. The Owen County Property Tax Assessment Board of Appeals (“PTABOA”) valued the property at \$25,400 for land and \$89,500 for improvements for a total value of \$114,900. The Davises appealed this decision to the Board, electing to proceed under the small claims procedures. On February 27, 2020, Ms. Jennifer Thuma, the Board’s designated administrative law judge (“ALJ”), held a hearing in Spencer on the Davis’s appeal. Neither she nor the Board inspected the subject property.
3. Clifford and Shirley Davis appeared *pro se*. Mr. Kenneth W. Anderson, Owen County Assessor, and Suzanne Simmerman, Deputy Assessor, appeared for the Assessor. All were sworn and testified.

RECORD

4. The following exhibits which were admitted without objection:

Respondent Exhibit 1:	Form 131 Petition
Respondent Exhibit 2:	Form 130 Notice
Respondent Exhibit 3:	Form 134
Respondent Exhibit 4:	Form 114
Respondent Exhibit 5:	Form 115
Respondent Exhibit 6:	2018 Property Record Card
Respondent Exhibit 7:	2019 Property Record Card
Respondent Exhibit 8:	Updated 2019 Property Record Card
Respondent Exhibit 9:	Photographs of subject property
Respondent Exhibit 10:	GIS image of subject property

Respondent Exhibit 11:	Aerial photo of subject property-2016
Respondent Exhibit 12:	Aerial photo of subject property- 2018
Respondent Exhibit 13:	Ratio study-Jackson, Jennings & Morgan townships
Respondent Exhibit 14:	Ratio study for Jennings township
Respondent Exhibit 15:	Property record cards for sales used in ratio study
Respondent Exhibit 16:	Images of log homes in Owen County

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or the ALJ; (3) an audio recording of the hearing.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's decision has the burden of proving that a property's assessment is incorrect and what its correct assessment should be. *See Meridian Towers East & East v. Washington Twp. Assessor*, 805 N.E. 2d 475, 478 (Ind. Tax Ct. 2003). Indiana Code § 6-1.1-15-17.2 provides for an exception to this rule (1) when the assessment under appeal is an increase of more than 5% over the prior year's assessment or (2) where the assessment is above the level determined in the taxpayer's successful appeal of the prior year's assessment. If the new assessment is based on substantial renovations, new improvements, or changes in zoning or use, the exception may not apply. Ind. Code § 6-1.1-15-17.2 (c).
7. In this appeal, the prior year's assessment was \$108,800 and the assessment increased more than 5% to \$114,900. The Assessor conceded that he bore the burden of proof.¹

SUMMARY OF CONTENTIONS

8. The Assessor presented the following case:
 - a. The Assessor argued that the subject property's value increased because the Davises improved the house by replacing the roof and increasing its lifespan. This, along with the new dormer, changed the condition of the dwelling from fair to average. *Anderson testimony; Simmerman testimony; Resp't. Exs. 9, 11, 12.*
 - b. In addition, the Assessor provided a ratio study of three townships and a county ratio study. The Assessor argued that these studies showed an increase in the value for the area. *Simmerman testimony; Resp't. Ex. 13, 14.*

¹ The record shows that at least a portion of the new assessment was based on renovations to the subject property (a new roof). Because the Assessor conceded the burden of proof, we will not examine whether these renovations were substantial for the purposes of Ind. Code § 6-1.1-15-17.2(c).

9. The Davises presented the following case:
 - a. Clifford Davis testified that the current assessment did not account for the fact that the property had no running water, or a working well, which required water to be brought in to the property. *Clifford Davis testimony*.
 - b. The Davises also argued that there was no justification for the increase in their assessment. Clifford Davis testified that the roof had only been replaced because it was damaged by a tree. A dormer was added at the same time, but he stated that it was necessary in order for him to access the attic because he could no longer crawl through it. *Clifford Davis testimony*.

ANALYSIS

9. The Board finds for the Davises for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. Ind. Code § 6-1.1-15-18.
 - c. As discussed above, the Assessor bore the burden of proof. But he focused his arguments on whether the current assessment was performed correctly, such as why the condition of the home was changed from fair to average. A party may not make a case simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the Assessor needed to offer market-based evidence of the subject property's value on the assessment date, which he failed to do. Thus, we find the Assessor did not meet his burden of proof. The Davises have not requested a lower value than the prior year's assessment, thus we need not examine their evidence.

FINAL DETERMINATION

10. Because the Assessor failed to meet his burden of proof, the subject property's assessment is reverted to the 2018 assessment of \$108,800.

ISSUED: May 20, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.